

areas where a family can live with tenant-based assistance. The subpart covers:

(a) Assistance for a family that rents a dwelling unit in the jurisdiction of the HA that originally selected the family for tenant-based assistance.

(b) "Portability" assistance for a family that rents a unit outside the jurisdiction of the initial HA.

§ 982.352 Eligible housing.

(a) *Ineligible housing.* The following types of housing may not be assisted by an HA in the tenant-based programs:

(1) A public housing or Indian housing unit;

(2) A unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f);

(3) Nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services;

(4) College or other school dormitories;

(5) Units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions;

(6) A unit occupied by its owner or by a person with any interest in the dwelling unit. (However, assistance may be provided for a family residing in a cooperative. Assistance may be provided to the owner of a manufactured home leasing a manufactured home space. In the case of shared housing, an owner unrelated to the assisted family may reside in the unit, but assistance may not be paid on behalf of the resident owner. For provisions on cooperative housing, manufactured home space rental, and shared housing, see part 982, subpart M.); and

(7) For provisions on HA disapproval of an owner, see § 982.306.

(b) *HA-owned housing.* (1) A unit that is owned by the HA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HA) may only be assisted under the tenant-based program if:

(i) The family has been informed by the HA, both orally and in writing, that the family has the right to select any eligible dwelling unit, and an HA-owned unit is freely selected by the

family, without HA pressure or steering;

(ii) The unit is not ineligible housing;

(iii) During assisted occupancy, the family does not benefit from any form of housing subsidy prohibited under paragraph (c) of this section;

(iv) The initial contract rent (for a certificate program unit) and the initial rent to owner (for a voucher program unit) has been approved by HUD before execution of the HAP contract and commencement of the assisted lease term; and

(v) Any adjustment of the contract rent (for a certificate program unit) and any changes in the rent to owner (for a voucher program unit) is approved in advance by HUD.

(2) The HA as owner is subject to the same program requirements that apply to other owners in the program.

(c) *Prohibition against other housing subsidy.* A family may not receive the benefit of tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

(1) Public or Indian housing assistance;

(2) Other Section 8 assistance (including other tenant-based assistance);

(3) Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);

(4) Section 101 rent supplements;

(5) Section 236 rental assistance payments;

(6) Tenant-based assistance under the HOME Program;

(7) Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);

(8) Any local or State rent subsidy;

(9) Section 202 supportive housing for the elderly;

(10) Section 811 supportive housing for persons with disabilities;

(11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or

(12) Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, "housing subsidy" does not include the

housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23860, Apr. 30, 1998; 64 FR 13057, Mar. 16, 1999]

EFFECTIVE DATE NOTE: At 64 FR 13057, Mar. 16, 1999, § 982.352 was amended by revising paragraph (a)(6), effective Apr. 15, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 982.352 Eligible housing.

(a) * * *

(6) A unit occupied by its owners or by a person with any interest in the dwelling unit. (However, assistance may be provided for a family residing in a cooperative. In the certificate program, assistance may be provided to the owner of a manufactured home leasing a manufactured home space. In the case of shared housing, an owner unrelated to the assisted family may reside in the unit, but assistance may not be paid on behalf of the resident owner.); and

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§ 982.353 Where family can lease a unit with tenant-based assistance.

(a) *Assistance in the initial HA jurisdiction.* The family may receive tenant-based assistance to lease a unit located anywhere in the jurisdiction (as determined by State and local law) of the initial HA. HUD may nevertheless restrict the family's right to lease such a unit anywhere in such jurisdiction if HUD determines that limitations on a family's opportunity to select among available units in that jurisdiction are appropriate to achieve desegregation goals in accordance with obligations generated by a court order or consent decree.

(b) *Portability: Assistance outside the initial HA jurisdiction.* Except as provided in paragraph (c) or (d) of this section, the family may receive tenant-based assistance to lease a unit outside the initial HA jurisdiction:

(1) In the same State as the initial HA;

(2) In the same metropolitan statistical area (MSA) as the initial HA, but in a different State;

(3) In an MSA that is next to the same MSA as the initial HA, but in a different State; or

(4) In the jurisdiction of an HA anywhere in the United States that is administering a tenant-based program.

(c) *Nonresident applicants.* (1) This paragraph (c) applies if neither the household head or spouse of an assisted family already had a "domicile" (legal residence) in the jurisdiction of the initial HA at the time when the family first submitted an application for participation in the program to the initial HA.

(2) During the 12 month period from the time when the family is admitted to the program, the family does not have any right to lease a unit outside the initial HA jurisdiction. During this period, the family may lease a unit located anywhere in the jurisdiction of the initial HA.

(3) If both the initial HA and a receiving HA agree, the family may lease a unit outside the HA jurisdiction under portability procedures.

(d) *Income eligibility.* (1) For admission to the certificate or voucher program, a family must be income eligible in the area where the family initially leases a unit with assistance in the certificate or voucher program.

(2) A portable family transferring between the certificate and voucher programs must be income-eligible for the new program in the area where the family leases an assisted unit. This requirement applies if the family is either:

(i) Transferring from the initial HA certificate program to the receiving HA voucher program; or

(ii) Transferring from the initial HA voucher program to the receiving HA certificate program.

(3) If a portable family was already a participant in the initial HA certificate or voucher program, income eligibility is not redetermined unless the family transfers between the programs.

(e) *Leasing in-place.* If the dwelling unit is approvable, a family may select the dwelling unit occupied by the family before selection for participation in the program.

(f) *Freedom of choice.* The HA may not directly or indirectly reduce the family's opportunity to select among